

FILED

MAR 27 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

DONNA JUNE ENRIGHT,

Petitioner,

vs.

LEROY KIRKEGARD, Warden,
Montana State Prison,

Respondent.

CV 13-18-GF-DWM-RKS

ORDER

Before the Court are the findings and recommendations of United States Magistrate Judge Keith Strong regarding Petitioner Donna June Enright's petition for writ of *habeas corpus* and motion for leave to proceed *in forma pauperis*.

Plaintiff objects to Judge Strong's findings and recommendations.

When a party objects to any portion of findings and recommendations issued by a Magistrate Judge, the district court must make a *de novo* determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir.1981).

In considering Petitioner's motion for leave to proceed *in forma pauperis*, Judge Strong observed her prison trust account statement shows a balance of

\$307.08, ample funds with which Petitioner could pay the \$5.00 filing fee. Petitioner's objections do not contest this finding, therefore, Judge Strong's recommendation that Petitioner's motion for leave to proceed *in forma pauperis* be denied is adopted in full.

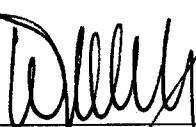
As explained by Judge Strong, this is Petitioner Donna June Enright's second petition for a writ of *habeas corpus* predicated on the May 1999 criminal judgment against her for homicide and arson in Judith Basin County. This Court does not have jurisdiction to consider a second or successive *habeas* petition. 28 U.S.C. § 2244(b)(3)(A); *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (*per curiam*). Since this Court's jurisdiction is plainly lacking, a certificate of appealability will not be issued. *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Petitioner's objections do not contest these findings, therefore, Judge Strong's recommendation that Petitioner Donna June Enright's petition be dismissed and a certificate of appealability be denied are adopted in full.

In accordance with the foregoing, IT IS ORDERED that Judge Strong's findings and recommendations (doc. 4) are ADOPTED IN FULL. Petitioner's motion for leave to proceed *in forma pauperis* (doc. 2) is DENIED.

IT IS FURTHER ORDERED that Petitioner Donna June Enright's petition for writ of *habeas corpus* is DENIED. A certificate of appealability is DENIED.

The Clerk of Court is directed to close the case and enter judgment against Petitioner by a separate document pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 27th day of March, 2013.


Donald W. Molloy, District Judge
United States District Court